

REMARKS

The Final Action of October 18, 2006 set forth a new ground of rejection of Claim 1, as well as many of the dependent claims under 35 U.S.C. 103(a), as being unpatentable over Iotti US Patent 4,306,396 in view of Snitovski US Patent 4,802,318 and Gilbert US Patent 1,188,065. As indicated above, this was a new ground of rejection of Claim 1, and therefore this is the first opportunity the Applicant has had to discuss the art newly relied upon or their relevancy to Claim 1, as well as the other claims, now pending in the Application.

First, it is to be noted that the Action of October 18, 2006 was made Final even though it was based on a completely new ground of rejection. The Examiner justified making the Action Final under MPEP Section 706.(a) on the ground that "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action".

This justification is not at all understood. The only amendments made in the previous Response was to change "said plurality of aerated concrete blocks being bonded on their opposite faces" to -- each of said plurality of aerated blocks being bonded on its opposite faces --. Clearly, such a relatively minor amendment did not raise new issues, or require a new search. It is therefore respectfully requested that the Examiner withdraw that Final so that this new ground of rejection can be considered on its merits.

With respect to the merits of this new ground of rejection, it will be helpful first to set forth the criteria when a rejection under 35 U.S.C. based on obviousness is proper and appropriate.

See for example National Tractor Pullers Assn, Inc. v. Watkins 205 USPQ 892 wherein the Court stated (on Page 911):

"The test of obviousness under 35 U.S.C. 103 is not whether a prior art device could be modified into something resembling the applicant's structure, but the proper test is whether, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art, given the teachings of the prior art, to make the invention. Graham b. John Deere, 383 US 1.148 USPQ 459 (1965). In considering the prior art, prior patents are references only for what they clearly disclose or suggest and it is not proper to modify their structures in a

manner which is not suggested by prior art. In re Randol and Redford, 425 Fig. 2d 1286, 165 USPQ 586 (CCPA 1970)”

As will be clearly shown below, this “test for obviousness” would not justify a rejection of Claim 1 on the combination of references relied upon by the Examiner in the Final Action of October 18, 2006.

Thus, Claim 1, which is the only independent article claim now pending in the Application, defines a modular wall segment comprising two walling sheets of a selected two-dimensional shape and size, and a plurality of aerated concrete blocks contiguously located in a plurality of rows and columns between the two walling sheets, with each of the plurality of aerated concrete blocks being bonded on its opposite faces to the two walling sheets.

It will thus be seen that Claim 1 requires, among other features: (1) a modular wall segment, constituted of (2) two walling sheets, sandwiching between them (3) a plurality of aerated concrete blocks. As described in the specification, such a structure produces many of the advantages of sheets and blocks, without many of the disadvantages of each such structure.

For example, as brought out in the last paragraph of Page 2, walls constructed of walling sheets are typically built more rapidly, but are less strong and less solid than walls built of construction blocks. On the other hand, walls built of construction blocks take considerably more time, are labor-intensive, and also require a high degree of skill and workmanship. Thus, Claim 1 defines a “hybrid” modular construction of sheets and blocks which provides many of the advantages of both walling sheets and construction blocks, but without many of the disadvantages of each such construction.

Iotti, relied upon as a primary reference, relates to a laminated partition constituted of a plurality of layers bonded together into a sandwich structure. It includes nothing corresponding to the blocks defined in Claim 1.

The Examiner refers to layers 4a and 4b as corresponding to the plurality of aerated concrete blocks in Applicant’s construction defined in Claim 1. Layers 4a and 4b in this reference are described as intermediate layers of wooden fibers agglomerated by Portland cement (Column 2, lines 61–64), with each layer being constituted of five rectangular plates each having a length of about two meters and a width of about 0.5

meters (Column 3, lines 1–10). Such “plates” may be considered comparable to the sheets in the Claim 1 construction, but could hardly be considered to be comparable to the “blocks contiguously located in a plurality of rows and columns” as defined in Claim 1. Moreover, there is a complete difference in the materials used in the two structures.

The difference between a “plate” and a “block” is not a difference in degree, but rather is a difference in kind. Clearly, therefore, the kind of structure described in Iotta is completely different from the kind of structure defined in Claim 1 of the present Application, and therefore Iotta could hardly serve as a proper primary reference in a Section 103 rejection under the test of obviousness as set forth, for example, in the above quotation.

The foregoing differences in the construction described in Iotta over that defined in Claim 1 of the present application are not rendered obvious by either of the secondary references relied upon, in combination with Iotta, for rejecting Claim 1.

Thus, whilst Snitovski discloses aerated concrete blocks contiguously located in a plurality of rows and columns, its disclosure is no more than what was expressly acknowledged as being known in the prior art, for example in the bridging paragraph of Pages 9 and 10. As noted above, the use of such blocks in the known constructions is not only slow and labor-intensive, but also requires a high degree of skill and workmanship, (see the top of Page 2 of the specification). These disadvantages are substantially avoided by the modular wall segment construction defined in Claim 1.

Gilbert US Patent 1,188,065, relied upon as an additional reference in the rejection of Claim 1 under 35 U.S.C. 103, is even more remote, as shown by the following quotation (Column 1, lines 21–36):

“This invention comprehends essentially the employment of a frame, the component parts of which are rigidly secured together, and blocks arranged to fill the openings or spaces in said frame, said blocks being secured or bonded together by a cementitious substance, a layer or coating of a lubricant extended over the outside of said blocks, which also renders the blocks impervious to moisture, a metal reinforcement extended over aid coated blocks which is attached to the frame, being thereby supported independently of the blocks, and a layer of cement applied to

and extended over the outside of the coated blocks and frame, in which the metal reinforcement is embedded.”

Thus, Gilbert illustrates a building wall structure constituted of a plurality of gypsum blocks 2 coated on their inner surfaces with a layer 3 of gypsum plaster and a layer 4 of asphaltum, and on their outer surfaces with a layer 7 of cement applied by means of a cement gun. Such a construction clearly is also a different kind of structure from the modular wall segment defined in Claim 1.

In view of the foregoing, it is submitted that the combination of features defined in Claim 1 is not disclosed, nor rendered obvious, from any of the three references cited by the Examiner, whether taken singularly or in combination, and therefore that Claim 1 is allowable over these references.

Claims 2-19 all depend from Claim 1, and are therefore believed allowable for the same reasons as discussed above in addition to the further features recited in the respective dependent claims.

Claim 20 is drawn to the method, and recites basically the same combination of features as set forth in Claim 1, and is therefore submitted to be allowable with that claim over the cited references for the same reasons as discussed above with respect to Claim 1.

In view of the foregoing, it is believed this Application is now in condition for allowance, and an early Notice of Allowance is therefore respectfully requested.

Since the Application is under Final, an early action is particularly solicited to avoid the need for filing an Appeal.

Respectfully submitted,



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Encl.:

Petition For Extension Of Time (1 Month)